

ZBA Minutes – August 8, 2019  
ZONING BOARD OF APPEALS  
TOWN OF RIVERHEAD  
SUFFOLK COUNTY  
RIVERHEAD, NEW YORK  
(631) 727-3200

These minutes are a summary of the August 8, 2019 Town of Riverhead Zoning Board of Appeals meeting held at the Town of Riverhead Town Hall, Riverhead, NY.

PRESENT:

Frank Seabrook  
Leroy Barnes  
Otto Wittmeier  
Fred McLaughlin  
Dawn Thomas, Counsel

ABSENT:

**ADJOURNED**

Chairman McLaughlin announced the adjournment of Appeal No. 2019-005 – Christopher and Kristin Donnelly – 668 Sound Shore Road, Riverhead – SCTM No. 600-7-3-3 – RA40 Zoning to August 22, 2019.

A motion was made by Mr. Wittmeier and seconded by Mr. Seabrook that the appeal be adjourned to August 22, 2019. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Ms. Worthington	AYE
Mr. Seabrook	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

**RESERVE DECISION**

**Appeal No. 2018-036 – Riverhead Dodge – 1716 Old Country Road, Riverhead – SCTM No. 600-101-1-10.21 (formerly 600-101-1-10.2 & p/o 6.3) – BC and DRC Zoning** - for variances and/or relief from Chapter 301 Section 93 where the proposed impervious surface is 79.03% of the lot area and the maximum permitted is 75%.

James V. De Lucca, architect, was present. Mr. McLaughlin stated, so, the only changes from last year's site plan? Mr. De Lucca replied, it's basically...they just added a piece of property on and put the same impervious area. Same as last year.

Ms. Collins read the decision, and it was seconded by Mr. Wittmeier that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Ms. Worthington	AYE
Mr. Seabrook	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

**DETERMINATION OF THE ZONING BOARD OF APPEALS**

**APPEAL NO:** 2018-036

**APPLICANT/PROPERTY OWNER:** Applicant: Riverhead Dodge Inc., 642 W. Main St, Riverhead, NY 11901

Owner: Mary Ellen Real Estate, LLC, 642 W. Main St, Riverhead, NY 11901

RELIEF SOUGHT: for variances to and/or relief from Chapter 301 Section 93 where the proposed impervious surface is 79.03% of the lot area and the maximum permitted is 75%.

LOCATION: 1716 Old Country Road, Riverhead

SCTM#: 600-101-1-10.21 (formerly nos. 600-101-1-10.2 & P/O 6.3)

ZONING DISTRICT: Business Center (BC) & Destination Retail Center (DRC)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 170, 673 sq. ft. or 3.918 acres.  
*Business Center:* Minimum lot area is 20,000 square feet; minimum width lot at front street is 100 feet; maximum building lot coverage without sewer is 15%; maximum building lot coverage with sewer is 20%; maximum building lot coverage with transfer of development rights is 30%; maximum impervious surface is 75%; maximum height of buildings is 35 feet; maximum floor area ratio without sewer is 0.15; maximum floor area ratio with sewer is 0.20; maximum floor area ratio with transfer of development rights is 0.60; minimum front yard depth is 50 feet; minimum depth for each side yard of an interior lot is 15 feet; minimum combined depth for 2 sides of an interior lot is 30 feet; minimum depth facing side street of corner lots is 25 feet; minimum combined depth for 2 sides of corner lot is 40 feet; minimum rear yard depth is 25 feet. *Destination Retail Center:* Minimum lot area is 40,000 square feet; minimum lot width at front street is 200 feet; building lot coverage (footprint) maximum without sewer is 10%; building lot coverage maximum with sewer is 15%; building lot coverage maximum with transfer of development rights is 30%; maximum impervious surface is 75%; maximum height of buildings is 35 feet; floor area ratio maximum without sewer is 0.10; floor area ratio with sewer is 0.20; floor area ratio maximum with transfer of development rights is 0.60; minimum front yard depth is 50 feet; minimum depth of each side yard of interior lots is 25 feet; minimum combined depth for 2 sides of interior lots is 50 feet; minimum depth for each side yard of corner lot is 25 feet; minimum combined side yard depth of corner lots for 2 sides is 50 feet; minimum rear yard depth is 50 feet.

DATE OF HEARING: 7/12/18, Reserve Decision 8/8/19 INSPECTION DATES: 7/5/19, 7/9/19, 7/10/19

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 this matter was referred to Suffolk County Planning Commission and by letter dated, July 13, 2018 was considered to be a matter for local determination.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and determines that this application is a Type I action pursuant to SEQRA. After a mandated 30-day Coordinated Review period, the Planning Board by Resolution 2019-069, dated August 1, 2019, assumed Lead Agency and issued a Negative Declaration pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearing of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

#### HISTORY/PROPERTY FACTS

1. On February 5, 2015 by Resolution No. ADM 2015-0009, the Planning Board approved a one-page site plan last revised January 30, 2015 with condition No. 3 stating that the site plan application for an automobile dealer will be null and void if a new site plan application for a new automobile dealer, consisting of a new building that is approximately 26,027 square feet in size, is not submitted to the Planning Department within three months of the date of the approval of the aforementioned resolution.
2. On April 16, 2015 by Resolution No. ADM 2015-0028, the Planning Board approved an extension of the site plan for Riverhead Dodge D/B/A Truck Center.

3. Zoning Board of Appeals Determination 15-16 dated May 28, 2015 granted relief from Chapter 108-267, permission to provide 27 feet of an unoccupied area in the front yard instead of the required 35 feet for a proposed building to be constructed for a commercial automobile dealership.
4. Zoning Board of Appeals Determination 16-10 dated February 11, 2016 granted relief from Chapter 108-267, permission to provide for 78.9% impervious surface instead of the permitted 75% resulting from the construction of a commercial building (auto dealership) with site improvements.
5. A denial letter was sent from the Building Department on June 18, 2018 and an application was made to the Zoning Board of Appeals on June 27, 2018.
6. A public hearing was held by the Zoning Board of Appeals on July 12, 2018; a decision was reserved for declaration of SEQRA and completion of Coordinated Review.
7. Planning Board Resolution 2019-066 dated August 1, 2019 issued a Negative Declaration and assigned Lead Agency status to the Planning Board.
8. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
  - a. The property is presently improved with the following structure(s):
    - i. Commercial building

**FINDINGS:** The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as the use of the property remains unchanged, auto dealership, and the sub-surface drainage structures are to be installed per Town Code requirements.
2. The requested variance is not substantial because the proposed impervious surface exceeds that permitted by only 4.03%, and previous relief granted by this board permitted 78.9% impervious surface.
3. The benefit sought by the applicant cannot be achieved by some alternative means because Chrysler Corporation requires impervious surface for parking as maintaining clean cars for sale in a gravel parking lot is impractical.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as the proposed site plan considers all Town Code requirements and provides for vegetative buffering.
5. The alleged difficulty that the property owner is experiencing was not self-created as the requirements of Town Code and the specifications of the auto dealership's site development have been coordinated through site plan review. The proposed revision is an ideal layout for the needs of the applicant and the advisement of the Planning Board.

The motion was made by Ms. Collins and seconded by Mr. Wittmeier, that the aforementioned determination be approved:

**THE VOTE**

**MR. SEABROOK: AYE      MR. BARNES: AYE**  
**MRS. WORTHINGTON: AYE      MR. WITTMEIER: AYE**  
**MR. MCLAUGHLIN: AYE**

**This determination X was \_\_\_ was not  
therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

## NO CONDITIONS

## PUBLIC HEARINGS

**Appeal No. 2019-026 – 1315 West Main LLC – 1315 West Main Street, Riverhead – SCTM No. 600-119-2-38 – RFC Zoning** - for an interpretation of Chapter 301 Section 164 C where building for firearm testing/sighting is not customarily accessory to preexisting nonconforming retail use. *ADJOURNED FROM JULY 25, 2019*

Charles Cuddy, Esq. was present for the application. Mr. Cuddy stated, when we were here last time I wanted to make clear, and maybe we didn't so try again. What we're doing is we're interpreting the code, and we believe that we're river-related. All of the information that you have says we're preexisting nonconforming use; we believe that's not true. We're river-related; the DEC has indicated in its stamped plan that we're river related. We have fishing, hunting, and we have boating as part of our place on the river which is on West Main Street and the Peconic River. So, it's our opinion that we meet the requirements of river-related retail use which is 301-164 A2 of the Town Code. When we get to that point, we're asking you to do one other thing. We believe the gun container that we're talking about is an accessory use. We believe that because gun stores have accessory gun ranges which are much greater than gun containers. The gun container is a two person entity that is supervised by one other person which is an employee and supervisor of the site. In that gun container they use it because he services pistols and other estate type sale guns, and he needs to know if they work, and so for him, this is an absolute accessory that he needs to have at his site. He also can train people so they shoot properly, and that's a very important element. What we're going to do is propose that we have a 10' x 50' gun container which has rubber plastic in it...excuse me, rubber ballistic in it. That takes care of all the bullets; they don't go anyplace. They stay inside. It's used only during working hours, so we're talking ten to six. It's locked; it stays locked, except when the supervisor comes out to show people how to use their firearms. Mr. McLaughlin asked, and there are no clubs or anything along that line? Mr. Cuddy responded, thank you; it's not public. It's only used by the people that are there. Mr. McLaughlin asked, and there's no storage of guns in the container? Mr. Cuddy stated, there's no storage of guns in there. Gun sales are all inside the store, and the store basically is for hunting, and of course, the river is a place where people hunt ducks and fish. That's why I'm saying this is river-related and this is an accessory use. I have Mr. Sendlewski here who is also an architect and who has done some site planning for this site. He would like to explain a little bit of the history of it and also the operation of the gun container. Mr. McLaughlin stated, okay, before he comes up, I know this young lady would like to come up and say a few things. Maybe Mr. Sendlewski can add on to that, so we'll take this lady up first.

Ruth Pollack approached. Mr. McLaughlin stated, so, you're the lady across the street if I'm not mistaken. Ms. Pollack stated, I am, sir. Mr. McLaughlin asked her to state her name for the record. Ms. Pollack stated, first of all I did want to start by saying I did request an adjournment of tonight's hearing from Mr. Cuddy this afternoon because I have so much to review in terms of documents that I FOILED. I can't really be prepared to properly go forward except to a certain extent, in all fairness. He has not gotten back to me today with a consent to adjournment. Mr. McLaughlin asked, when did you call him? Ms. Pollack replied, I called him this afternoon about 3:00, and his secretary said he stepped away from his desk, and he hasn't consented one way or the other. That was my first request was to adjourn this hearing so that I, and others, can actually view the documentation that I have made copies of. When I made copies today at the Building Department, there are a number of things that are not there. Many things that were supplied to the DEC for the permit to which Mr. Cuddy is referring are not there. So, it's impossible just that alone for me to know what was submitted. What did the DEC actually see? What were they aware of? It talks a 10 x 50 foot slab of concrete; it does not talk about a metal container which would be a three dimensional 10 x 50 x 10 feet in size. It's not even referred to on there in any way, so I would like to see what the DEC had submitted to it before it gave them a permit, and what is the permit even for? It

doesn't say. That is one of the things that should be researched for this board to properly decide, and for me as a neighbor who will be affected by this to go. Now, I could...I have other information that I would like to discuss. I don't know whether you'd like to hear it now or whether you'd like to hear it later. Mr. McLaughlin stated, we're all ears. Ms. Thomas stated, I think the application before the board is for an interpretation of the use as a river-related use, so those comments should be addressed toward that. Ms. Pollack stated, I understand that. I will address that right now. Ms. Thomas noted, anything related to DEC would be a DEC question, not a Zoning Board question. Ms. Pollack stated, understood. First of all, again, with all due respect, I did go to the site; I did look at the site myself. I did notice that while Mr. Cuddy talked about hunting ducks and fowl, and that's in the application, that there are semi-automatic weapons within the shop. I think I said last time, I have hunted. I have friends who hunt...the arrows, the guns, and so forth. I cannot understand how anyone, any neighbor, any person of common sense, could ever say it makes sense, or I would expect that a store that used to be forever a bait store for fishing, could now have not only hunting rifles and pistols, which can literally shoot through a wall, and then semi-automatic weapons...that is something that fits into our neighborhood? Our neighborhood is a neighborhood; it is families. We have people walking by, people on bicycles, children living by, families. That's the number one thing is the type of weapon that somehow, without notice to us, was allowed into this particular facility. Number two, if we look at interpretation, normally, historically, an accessory use, which is the word we are looking at here, an accessory use means something less than or accessory to a larger thing. I don't understand how an accessory use can be interpreted as a store that has been a bait store, and I remember this store myself personally, can now say, now we want to sell all kinds of weapons and we also want to bring those weapons from the store out to a box on our land and have people test those weapons as a box on that land in a neighborhood. It's a reach. I'm opposing this for many reasons, but one of them is this is not a preexisting, this has never been used as a hunting or a gun sales place. Ms. Thomas stated, but the existing zoning permits river-related uses. So, their application is that it is not a preexisting nonconforming use; it's actually a permitted use in the zoning. I just have one question in terms of... Mr. Pollack interrupted, I'm not sure where you're seeing that. Ms. Thomas replied, that's their application. They're asking in their application that these are river-related uses; they're not asking the board to determine if it's preexisting or nonconforming. Question, if they had an archery range on the property, would you have the same objection? Ms. Pollack stated, I probably would. Again, we're talking...archery can be defined as major hunting archery equipment, which my friends have used, or it can be used as children's archery or the high school archery. How are we defining archery? Ms. Thomas answered, hunting purposes. Ms. Pollack stated, okay, say whatever we use for hunting in the modern world. I would object to that, too, because if someone is testing that type of equipment next to...in a neighborhood...once an arrow or a bullet leaves that weapon, you cannot bring it back. It's too late. So, I said last time, I am a second amendment constitutional person; I totally understand that, and I'm saying that for the purpose of anyone who is a gun owner, but at the same time, this is a dangerous instrumentality. It's never been there before. Not to mention, they have said to me that the decibels, sound, within the chamber, the proposed metal chamber, is not going to exceed say, 65 decibels. We don't know that. That's what they're saying to us, but we don't know how loud it's going to be, and 65 decibels could be me standing next to the LIE and a truck going by. That can be very loud. So, that's a thing that we don't really know at this point because they haven't tested it; they haven't proven it. They're just claiming it. So, we have a sound issue. That also alters the neighborhood. In their application they indicated that this is a commercial use area. It is not just a commercial area, it is residential area. They did not check that off. I am not nitpicking here. I went through every single thing they did. I went through all of their applications. I spent time with them. I looked at the store; I looked at the area, and under the code, if you're talking about an accessory use to what is there already, how is the testing of a weapon, any weapon, whether it's a handgun, a type of archery, or a semi-automatic weapon, which now they seem to want to do, for fowl; I don't understand that... How is that an accessory use to the riverfront? It doesn't seem to make any sense to me at all, and I have a very open mind. I've lived here my whole life, with the exception of times that I've been away at grad school. It doesn't make sense to me that anyone living in the area would say, "yeah, the store just moved into Town. It's kind of like Edwards used to be, except they want to test the stuff outside of the store." Ms. Thomas asked, but would you agree that hunting and fishing are river-related uses? Ms. Pollack stated, hunting and fishing...hunting is difficult to say because I have never seen a hunter on the river. People used to fish in the river, and they probably still do, but from the standpoint of hunting I think it's a stretch to say that hunting and fishing are river...fishing is...but hunting is not necessarily the way they have defined it and expanded it. It's a dangerous instrumentality; once we allow it into our Town, we are now opening the door to other things. An example, I happen to love examples. Splish Splash started out

as a place for people to have fun, once an alcohol license was granted, now they have problems. Now, they have the police; now they have things they never had before. These are somewhat different things, but the point that I'm trying to make here is that once you start out with one thing, as these folks did, it's always going to be something else. Before you know it, what is now a safe neighborhood...and I thank the police for that; I thank the Town for that...is not going to be safe anymore. You cannot have a break-in. You cannot have a fire. You can't have a theft. Because if any of those things happen, it'll be too late. We have schools here; we have three schools in Riverhead. What are we going to say to the parents of the children that live in this town who go to school, that it's a safe area if we have a gun store in a residential neighborhood, not even a truly commercial like Route 58 area. What are we gonna say to them? Not only do they sell guns, but you can go test them there. They still have the Calverton Range. Is it more inconvenient for them to go to the Calverton Range? Eh, it's around the corner, but that's what they should have planned when they purchased this property. When you purchase property, you plan, and I said that last time. An entrepreneur purchases property and plans. They don't just say, "Gee, I just woke up this morning, and let's just test out guns. Not only that, let's bring all the semi-automatic weapons into the store, as well." Those could be tested in this box. How do I know as a neighbor or how does this honorable board know...how do you know that any of the weapons in that store are going to test properly in that box? We do not know because we have not been provided with the proof. For these reasons and others, specifically these, I am saying that this concept should be tabled for thirty days so it can be researched properly, and the sound issue and the danger issue getting the guns to the box can be properly evaluated before we let this go. Ms. Thomas stated, the sound issue and the danger issues would really be issues for the Planning Board and the site plan application. The sole issue before this board is whether that use is a river-related use. Ms. Pollack replied, how is it a...I don't see it as a river-related use. Ms. Thomas responded, that's your argument. I'm not suggesting you're wrong or right, I'm just suggesting that the issues relating to the property and the distances from the...where things go...and the sound, the Planning Board request information on the sound conformance to the sound code, the noise code, other things like that...those are not issues before this board. I just want to make sure you're clear about that. Ms. Pollack stated, I'm gonna go back and say...and I appreciate what you've said, once again...you are here to interpret the concept of accessory to and river-related activity. I cannot see how a reasonable person's standard, forget about me, a reasonable person could think that a gun shop that tests its weapons outdoors of the shop is a river-related activity. It's a stretch because it's never historically been used that way. Nothing in the Town Code, and I have read through the entire Town Code, even if you look up the word weapon throughout the Town Code, and you find the Naval base, for example. Many things were done before the Naval base was dismantled because of its effect on the people around the Naval base. So, now, you are introducing a weapon into the equation into of defining what is an accessory use to the river. People have hunted around Long Island, but to say that the river is a hunting ground, where's the proof? Mr. McLaughlin stated, there is a duck blind right off of the 7<sup>th</sup> hole at Indian Island. Ms. Pollack stated, I have golfed there, and I think I hit it once. Mr. McLaughlin stated, then you were out of bounds. Ms. Pollack stated, I was out of bounds, however, if you were golfing there and you saw someone with an automatic weapon hunting ducks, wouldn't you be alarmed? I would. Doesn't anybody see that the boundary lines are being crossed repeatedly in this town by these folks? Yeah, I've seen duck blinds, too, but who knows how long they've been there; who knows who uses them? I have nothing against duck hunting, but the way it's being introduced into this particular location which is just a residential area which...look, we've had restaurants there in the past, we've had attorneys, Saxtine...my family used to use lawyer Saxtine; his place is there. That's a commercial use. There are many commercial uses, but when you start adding something that's dangerous instrumentality to the use and say that it's an accessory to the use of the river, I believe you're adding a very dangerous thing to the mix. It's a stretch for anyone to say, "well that's okay," because you know what, a year from now, if this is approved, I'm predicting...if this is approved, that they'll be back and they'll say guess what, we want to try grenades now. Mr. McLaughlin interrupted, stop, stop, stop. You're way over the top. Ms. Pollack replied, they're over the top. Well, when I saw the AK-whatevers, I was a bit shocked. Mr. McLaughlin stated, okay, let's hear from Mr. Sendlewski now. Ms. Pollack added, well, he doesn't live here, I do.

Mr. Cuddy approached and stated, I just want to set the record straight; I'm sorry that people have to listen to all this, but when we were here last time you asked Ms. Pollack to contact me, she contacted me two days ago. She had fourteen days; she waited right to the end. We met her yesterday. Mr. Newman, the principal who's here, sat down with her at a table, and we spent time with her. We asked her if she had any questions. We explained in

detail to her what the gun container does. She had no questions; she wanted to process it a little bit. She's gone to the neighbors. The neighbors that are next to us have given letters consenting to this. I have another one from a second neighbor. Neighbors to the right which is the west, to the left which is the east have all consented. She does not live across the street, she lives 200 feet to the west. In back of her house is the train tracks. In front of her house is 25. She's worried about noise, it's hard to believe that she really is because noise is there all the time. We've given you, by the way, a noise statement from the manufacturer of this unit which shows that it meets the right decibels. It's hard to believe that what she's saying is credible. We do not sell the type of guns she's talking about. We sell hunting rifles, we sell fishing gear, and that's what we do. We believe we are river related, and we believe that the use will be helpful to people who are buying guns and also who want guns serviced. That's what we're talking about. Mr. McLaughlin asked, so there are no AK-47's, no M-16s? Mr. Cuddy replied, there are no AK...and in fact, you can't buy in this state assault rifles, and that's what she's talking about.

Mr. Barnes stated, Mr. Cuddy, I went over the permit, and I looked at the DEC's language, and they're usually pretty vague. On the survey it mentions that there's a proposed 50 x 10 metal container range. Mr. Cuddy replied, that's right. Mr. Barnes states, and it's stamped by the DEC. Mr. Cuddy responded, correct. Mr. Barnes continued, so, that's pretty evident that they know about that range. Ms. Pollack called from the audience, DEC is not specific, sir. It doesn't say anything about what's meant by...Mr. McLaughlin interrupted, hold on, now. We're not gonna be shouting across the room. Mr. Barnes noted, I was trying to point out to their attorney that I'm looking at the permit, and I'm seeing on the survey that they are...it's depicted on the survey. I think you said you saw a concrete pad? It's more than that. That's all this is saying. I'm just pointing it out. Mr. Cuddy added, it bothers me somewhat that we're having a request for an adjournment when there were two weeks to do some of this. The first time that she came was yesterday, and she could have come anytime she wanted. She could have looked at records any time she wanted. Now, she's talking about DEC records which, of course, are at the DEC. I don't understand; this is very plain as to what we're doing. She sat with us for half an hour; we showed her exactly what the container is, exactly what it does, how it operates. I don't know that you can do any more than that. I think when somebody has a visceral reaction to not liking something, they make up things, and I think a great deal of what she has just said was made up to delay it and defeat it; I don't see any purpose to it. I don't think extending the hearing is going to change anything, and that is why I wanted Mr. Sendlewski to talk. If she wants to talk, she can, but I'm disturbed that she would ask for a delay. Mr. Barnes stated, just one more question. Is the range going to be open to the public? Mr. Cuddy responded, no, it's only going to be open to the people who buy the guns and the people who are getting the guns serviced. Mr. Barnes asked, will they have...do they have a permit from Suffolk County Sheriff's Department to operate? Mr. Cuddy stated, yes, they do. Mr. Barnes asked, will they sanction that range? Mr. Cuddy responded, yes. This is something he has a gunsmith uses it. He has a gunsmith license. He has a sales license. He has licenses from the state of New York and the County of Suffolk. Mr. Barnes asked, AFT? Mr. Cuddy replied, yes. He has all of those permits. Mr. Barnes stated, okay, I was just asking. Mr. Cuddy continued, I would...I have, and I have given you up before...I would like to add a couple of things to the record. I have an affidavit from Mr. Sendlewski, and I also have the neighbor who is the second neighbor to the east consenting to the use of the gun container. So, I'd like to hand those up if I may. Mr. McLaughlin replied, please.

Martin Sendlewski, architect, 215 Roanoke Avenue, Riverhead, was sworn in. Mr. Sendlewski stated, I have some information that I think will help clear up a lot that I would like to hand up to the board. (Documents were submitted.) Mr. Sendlewski continued, I'm the architect for Baits and Barrels; I have been for many years. We are here as stated, not for a variance, not for relief. We are here for two interpretations; one is to the business being a river-related retail use, and the other being the container is accessory thereto. Historically, you had gotten a letter from Mr. Murphree highlighting the history. I was involved with the history of the project all the way through, and I'd like to clear up some items. My client when he first came by, as you can see on page one, he was looking to open this type of a business, one that relates to hunting and fishing. He's a sportsman. Wanted to open up that location. He drove by...this is the sign, Fisherman's Deli... seen that it was a river-related business and it was for sale. At that time, seeing that it was a perfect location for what he wanted to do, he reached out to myself and what we did was we then confirmed by zoning and DEC requirements that the use is a river-related retail use, and I checked the zoning code, 301-164 (2) under uses, and it does say that it is a permitted use as a river-related retail use as well as accessory uses. That would be on page two. Mr. Murphree's letter referred to the permit



process. We started the permit process after we confirmed that this was river-related retail, and we obtained a building permit which is page three. I specifically highlight that it notes that the use identified conforms to the Riverhead Town Code. I've highlighted that on page three. Subsequent to that on page four, we received a certificate of compliance. Again, I highlighted the area that says "conforms to all of the applicable provisions of law. On page five, you have a copy. This is the letter that Mr. Hammond wrote on October of 2018. I highlighted two things in here, one is "is in compliance with Town Code." Leroy, I think this sort of goes to what you had questioned before...I also highlighted on the bottom that it's carbon-copied to the Suffolk County Sheriff. That was dated October 12<sup>th</sup> of '18. Page 6 is the state of New York gunsmith license that is held by my client. It is dated December of '18...two months after we got that letter. It was signed by the Suffolk County Sheriff. That was a requirement. In fact, the letter that Mr. Hammond wrote was requested because it is required by the Suffolk County Sheriff in order to issue a gunsmith license for this location. They cannot issue a license for this location unless it is a permitted use. Mr. Hammond's letter, the intent of the letter, was to confirm that this was a river-related retail use and a permitted use. With that, there is a section on page three of Mr. Murphree's letter to the Zoning Board, his evaluation, he talks with reference to the uses which he referred to in the denial letter. In the denial letter, they said it was a nonconforming preexisting use, and the accessory was not an accessory use. There are a couple of issues with what Mr. Murphree indicated in the letter. First of all, I didn't include a copy, but I know you have it already...it was certainly confirmed by the certification letter and the DEC permit that shows the uses on the property that it is river-related. Also, there's a big conflict in Mr. Murphree's correspondence, and one that this board will have a very firm grasp upon, that is what he notes in paragraph 2. He says the existing business was allowed to occupy the same space as the deli as both uses are considered to be retail. That statement cannot be accurate and cannot be true unless the building is considered river-related retail. The purpose for that is that if it was considered a nonconforming use and they did this work, that would require under section 301-222 B he would have been required to obtain from this board, the Zoning Board of Appeals, "a nonconforming use on the same lot held in single and separate ownership may be changed to another nonconforming use when approved as a special exception from the Zoning Board of Appeals." Chapter 105-8 refers to granting special exemptions and special permits for any of the uses for which Chapter 301 requires obtaining such exemption. I have a copy of the code section if you want it. Therefore, this was not a change from one nonconforming use to another. If it was, we would have been required to get a special exception from this board in order to proceed with the application at that time. So, historically, the application, the previous use and the current use were and always have been considered river-related retail uses and are permitted as a permitted use in a commercial zone. The zoning and the zoning chart for this property is under the commercial district regulations. When you look at the tables, there's a residential table and a commercial table. This is under the commercial section, and it is a river-related retail use. It could not be....if it wasn't we would have required that exception all along the way. I think this is where Mr. Murphree misinterpreted things. I think his misinterpretation is also represented in his reference to the container where he says that the proposed shooting range would be open to the public. That also is absolutely not correct. It never was presented that way. If you've ever been to a public range, they're very large. They're multiple areas where people come in and pay a fee; they fill out a form. They have to have their license, and they can go in and practice and utilize a range. That is not what this is. Ms. Thomas interrupted, just a quick question, Mr. Sendlewski, the letter that you have as Exhibit #5 in the package that you just gave us dated October 12, 2018 wherein Mr. Hammond makes a zoning determination based on the zoning permit C/O dated August 16, 2016 and indicates that it's in compliance with Town Code in which specific use allows for the retail of firearms, ammunition and accessory products in accordance with applicable state and federal regulations...that letter was never appealed by anyone. That zoning determination was never appealed by anyone to the Zoning Board of Appeals? Mr. Sendlewski replied, no, it was not. As a matter of fact, it went to Mr. Murphree in the Planning Department, as well as the Sheriff. When this changed is when I came to the pre-submission meeting for the site plan in order to install the concrete slab for the container. Let me make clear something else...I think the site plan the lady was referring to was my site plan which actually shows basically the slab. The site plan is for the slab and the container goes on the slab, in accordance with the DEC permit. We never submitted that application because when we went to pre-submission that's when the misinterpretation came about as far as this not being a river-related retail use and the accessory use.

As to the accessory use, on page 7, what I have here, just some pictures of a rifle and a hand gun in their setup for zeroing in and siting. What makes this an accessory use to a business that sells firearms? Firearms have to have



their sites inspected. They have to zero in. They add scopes. They mount risers and scopes to rifles and to handguns. They have to adjust them. They have to replace triggers at times. Adjust the pull adjustment on triggers. They do servicing of firearms, also. That is something that is essential to my client's business and accessory to the sale of firearms. Also, on page 8, what you see here, this is a page that is a sample of a gun test. This is a certification. They will set up the gun on the bench test that I showed on the previous photograph. Then, they can zero it in, shoot it and certify that the sites are properly zeroed in. Literally what you see on the target is what you're going to hit. Some of the things that are essential here is that there are a lot of estate sales, people pass away, they have a collection of firearms. My client purchases those firearms for resale. In order to do so, they must test them. They must diagnose any issues including malfunctions, jams, ejection issues with regard to spent casings. They have to do a good evaluation of these firearms. Check the ammunition magazine, the magazine feeding mechanism. Then they have to repair them and do the bench test before they can resell. Also, with regard to the sale of firearms, all customers, individuals have different requirements for their own firearm. It can have to do with the operation of a slide, it can have to do with the grip, the width of the handle. It could have to do with the siting, when you site a target. These are all things...it's like trying on a pair of shoes before you buy it. You really need to know that it's the right fit. Therefore, that is something that in terms of the sale of firearms, that allows them to narrow down a selection of various pieces and have the potential purchaser then try them to make sure they're getting the right item. Then, as Mr. Cuddy indicated, that with the licensing that my client has, they do also train people how to use all of the different firearms, with many different mechanisms. The container is certainly accessory to the retail use. To me there's no question. If you're going to sell guns, you can't shoot them into a barrel of water like they did eighty years ago. As to the container, on page 9 I have a copy of the Table 1 for the permissible dBA level in the Town of Riverhead. From a commercial or public land, and again, this is a commercial land, to a residential use the dBA rating at the time that this would function is 65, right from the Town Code. Page 10, is a letter from Shooting Range Industries that indicates that based on their testing, they have a dB level at the desired 65 at fifty feet. We are 50 feet from the side lines. Each of these containers is not purchased off the shelf. Every one of them is custom made to water. If you have higher decibel ratings, they can be achieved through additional cost and additional insulation and sound attenuation; they can achieve those decibel levels. So, there's no sound issue with regard to this container that would exceed any Town Code limit. Page 11, also from Shooting Range Industries, I highlighted two items on here. One is the HEPA filter that environmentally these containers are enclosed; they have a filtration system so that when firearms are discharged, any of the fumes, vapors, dust, etc. Shards from rounds hitting the back of the container. Those are all filtered through a HEPA filter, and there is absolutely no discharge from the container that causes any environmental concerns. Also, I highlighted that they are designed for "a zero surface danger zone." These containers are the safest place...the safest place that you can discharge any firearm is when you are in this container, without any exception. It is the safest place that you can discharge any firearm. That's what the company sells; that is their business. The last page which is a foldout page...I just included a sample of the range. You can clearly see on the top of the picture, you see the plan view. It's two locations. Going back to the bench test, setting up a long gun bench test on one side and a hand gun bench test on the other side. You have testing to do, you go out, you can have all of these things set up for testing. When you have a sale, and you're looking at bringing a client out, a customer, you go out every time with an instructor. This is not open to the public. You try different firearms; decide on the one you like, as you're gonna go through a purchase. As well as any training, they would do the training right there in the container also. It's set up so it's safe in the back. It collects all the rounds, so the rounds are shot. It's designed that it takes the energy out of them; they go into a tube, they spin, they drop in a five gallon bucket. Then they have a vendor who comes and recycles the lead and metals. They take the bucket; they seal it and bring it out. They put a new bucket in. So, the whole time that it's in use, everything is kept and recycled. I'd like to think this clears up a lot of matters that have been raised with regard to the use as a river-related retail use, as the accessory use as it applies to my client's business, and also gives you the information you need in regard to the container itself.

Mr. Barnes asked, have you or could you provide a copy of this packet for Ms. Pollack so she can review it? Mr. Sendlewski gave a copy to Ms. Pollack.

Ms. Pollack approached and stated, I just wanted to say a couple of things tonight for now. I have not had an opportunity to review the material; I appreciate it. Mr. Cuddy, with all due respect to you, I was there. I am under

oath right now; we are all under oath. I saw the entire riverfront wall of the shop with semi-automatic weapons. Mr. McLaughlin asked, what semi-automatic weapons are we talking about? Are there M-16s? Mr. Cuddy testified there are no M-16s; there's not AK-47s. Ms. Pollack replied, I can't tell you the names of them...I couldn't walk back there and look at them, but I can tell you they're on their website as we speak. They're the kind that have...they're war weapons. They're the kind that have....they're like machine guns. We're not talking about rifles; I am not making this up. I am under oath. I can't name the numbers of them. I could look them up and make something up; I won't do that. Mr. McLaughlin addressed Mr. Cuddy and asked, do you have the owner here? Ms. Pollack continued, that's number one...I'm not making that up. I was not here sooner; I did not contact Mr. Cuddy sooner because my father passed away this month. Mr. McLaughlin stated, I'm sorry for your loss. Ms. Pollack replied, thank you. We have been involved in his funeral as of all of last week. My father passed away. That is the only reason when I saw this letter that I couldn't do anything more than I was doing; I was involved with that. His burial at the VA cemetery and all of the arrangements that go along with that. I'm not seeking any...I appreciate what you say; I'm not seeking sympathy. I'm just stating a fact. So, that's number 2 as far as why I didn't approach him sooner; I just had no time, but I would have. Ever since I heard about this, I've been really concerned about it. Just to get to the point quickly, apart from that I am telling you that the weapons in there and are monstrously huge, and I'm not exaggerating. The other thing I want to add, I don't who the vendors are, who are going to recycle this. They're not named. That is the least of my worries, but I am also concerned about there's a memo that was in the file from Mr. McLaughlin dated July 25, 2019 in which on page three he refers to fourth paragraph down...it starts with based on the information submitted by the applicant, the proposed shooting range would be open to the public who are not purchasing...Mr. McLaughlin interrupted, no, no, no, no. It was not from me. Ms. Pollack stated, I beg your pardon; it says to Fred McLaughlin from...Mr. McLaughlin stated, but he was wrong, as they've stated. It's not open to the public. Ms. Pollack responded, I don't know. Well, the public can come in to buy guns there, so that is the public part. That is my point. I'm not here to argue with anyone. Mr. McLaughlin stated, there's no gun clubs or anything going in there. That's what we're saying. Ms. Pollack stated, anybody can go in there. If I wanted to go in there, and I said I have a license, and I want to buy one of your guns...Mr. McLaughlin stated, that's how you sell things. Ms. Pollack replied, it is, but this is not the place. Mr. McLaughlin stated, let's find out what kind of weaponry they have. Ms. Pollack responded, I'm really curious to see what he has to say, and finally, the permitted uses in 301-164 do not, in my humble opinion, include a store of this magnitude. Thank you.

Thomas Newman, 60 Josie Ct, Riverhead, owner of subject property, was sworn in. Mr. McLaughlin stated, my question is what weaponry do you have? Do you have M-16s? Do you have AK-47s? Mr. Newman stated, no. M-16s they're fully auto. If I could clarify as far as the automatic...obviously the media, Ms. Pollack has listened to a lot of media lately. There has been a Safe Act in effect for many years now, 2013. A civilian cannot purchase an AR-15 which is a civilian version of an M-16...cannot purchase an assault weapon. Assault weapons are very, very clearly defined. They cannot have more than ten rounds; they can't have a detachable magazine and a collapsible stock. The law is very clear. We cannot sell them because you cannot buy them by law. If she's insinuating that we're selling arms, then I take umbrage to that. We sell by law; we have a license from the Sheriff's Department. We have multiple licenses from the ATF. ATF comes and inspects us on a regular basis. The stuff on the wall is deceiving; she may have seen something, but she doesn't realize that a lot of these things have magazines that are dummied or that have ten round capacity, but they're mounted permanently. She is probably referring to some of the firearms that we sell to our law enforcement. I moved to this town from Smithtown. I am a permanent resident here. I know the first day that she came up she said that we don't live anywhere. I live right off of Middle Road, very close. I moved here with pride; I opened this business with pride. I love being out east; I love all the hunters, the fishermen. Our clients are amazing. They patronize our place with pride. They're hunters; they always come in with their pictures. And they do use the Peconic River frequently during water fowl season to hunt ducks all the time. They always come and talk about what they've caught and this and this. We did this business not to open a gun store; I didn't want to open up a "gun" store, like a Dark Storm Industries like you'll see on cable news. This is what we wanted to do, hunting, fishing, sportsman. Any guns that she didn't like the look of, black guns, a lot of people don't like them, but the law enforcement in this community, and this is a great police department they are all customers of us, all the east end are small great departments, and they have to buy their firearms somewhere. They don't get issued from the police department; that's why we're filling the needs of the residents, the hunters, the sportsman and the law enforcement community.

Mr. McLaughlin stated, having spent 1968 in Vietnam, I am well aware of M-16s, and AK-47s, and the sounds they make, so...thank God somebody passed the (inaudible). Mr. Wittmeier asked, can I ask you a question? We're talking about selling guns. We're talking about repairing guns. Siting and making customer alterations. What is the percentage between selling and your repaired stuff? How does that work? Can you...just an estimate. Mr. Newman replied, believe it or not, as far as the gunsmith is concerned, and as far as the guns that we get, we have our...if you wanted to come in, you would see...the portion of our rifles, hunting rifles to our semi-automatic other guns is gotta be like 80%. We sell mostly shotguns, and most of the hunting guns are semi-automatic. Semi-automatic because of the media sounds like a horrible term, but people either shoot with a bolt action or a semi-automatic. Even in duck blinds; Mosberg makes semi-automatic shotguns. That's what people prefer to use. The word semi-automatic sounds scary, but most of the hunting rifles are semi-automatic. Mr. Wittmeier asked, so what's the repair part of your business, then? The repair part of the business, we do a lot of trading. We prefer to trade. We're able to get some of the guns that were made many, many years ago or out of people's collections that they've had for a long time. They come in and they're downsizing, "Hey, I have fifty guns. My wife wants me to sell these guns, and they'll come in and we'll get some nice nostalgic, really cool hunting firearms or any firearms. So, when these guns come in, Mr. and Mrs. Jones brings twenty guns in, we need to know whether they function; I can't put them on the shelf and sell them to you not knowing what they do, if they function, if there's a broken extractor. If I sell a gun that's bad, you're coming back the next day or someone can get hurt. Being a licensed gunsmith, I have to be careful in what I sell. It has to function. It has to be repaired properly 'cause I'm on the hook for it. Mr. McLaughlin asked, anyone else to be heard on this matter?

Ms. Pollack stated, I don't have internet service in here, so I can't go onto the website. But, I am telling you I did ask questions when I was there, I did. I got answers, but I am telling you this gentleman, who I did meet with; I have nothing against him personally. He did not answer your questions. He did not list the types of weapons I saw lined up against the wall. He just goes, "Well, they're semi-automatic weapons. No big deal." I study war. I'm interested in war because I want war to end, and I'm telling you that these weapons in that store are not just duck weapons. They're not just semi-automatic rifles. He didn't identify them. He avoided your question, and that's the problem I'm having here. Mr. Wittmeier stated, he did say that he supplied weapons to the law enforcement agencies. Ms. Pollack replied, he did say that. Mr. Wittmeier stated, those might be the weapons that you're looking at. Ms. Pollack stated, they were lined up against the wall for everyone to walk in to purchase. They sell to everyone, and even though the law enforcement may be some of the people who purchase these weapons, they are not all of the people that purchase them. Mr. McLaughlin stated, I'm looking at the website right now. They have a Mossberg bolt action...no, Remington...these are shotguns for the most part here. Ms. Pollack stated, these are not shotguns that I saw. Mr. Wittmeier stated, he also stated unless I heard him wrong, that they sell about 80% in hunting rifles or shotguns or whatever. I don't know what you saw. Ms. Pollack replied, I saw what was on the wall. Mr. McLaughlin stated, I don't see, and I'm looking at them. Mr. Barnes asked, these firearms that he's supposedly selling, he said he's sanctioned by the Sheriff's Office and ATF. Is he allowed to sell those guns? Ms. Pollack stated, I don't know the answer to that because I don't see any evidence that he's permitted to do that. Mr. Barnes continued, what's at question here, is this an accessory use to the main use. That's all we care about. We don't...Ms. Pollack noted, I understand, sir. Mr. Barnes stated, I know you're concerned about the shooting range, but the shooting range, obviously the architect just showed you the plans, how it's supposed to work. I don't think any bullets will penetrate and go outside and hurt anybody. Ms. Pollack responded, I don't know that. Mr. McLaughlin stated, well, we're looking at the documentation. Mr. Barnes stated, you're gonna have time to find that out. You're going to be given the opportunity to look into these issues; you could raise them if you'd like in writing to us, and we'll make a determination. Mr. McLaughlin stated, Leroy, I'd like to have a vote tonight, and she can take her concerns to the Planning. Mr. Barnes responded, whatever you want to do. Mr. Seabrook added, he's certainly not selling any illegal firearms. Ms. Pollack replied, I honestly can't say what he's selling. I know what I saw on the wall. Mr. McLaughlin replied, I just looked at the website. Ms. Pollack answered, the website might be scrubbed. I don't know. I'm not making that up. Mr. McLaughlin asked, anyone else to be heard on the matter? Mr. Barnes stated, I don't know if that's being fair. Ms. Pollack answered, I'm always fair; I don't have to cheat.

Janet Pollack-Cantor was sworn in. Ms. Pollack-Cantor stated, I'm surprised that more of the public isn't ready to stand up and ask questions about this particular business that may be coming into the neighborhood. I would

like to see more people speak about it and ask these questions, not just us. As a speech language pathologist who has worked in the Riverhead School District for so many years and had close relationships with wonderful students, in today's climate I'm surprised that this type of business is even being considered. Even in such a small neighborhood. I don't see how this kind of business is good for the community; it doesn't cause growth in the community. If anything, I believe it holds potential for difficulty. At any rate, it is worthy of closer scrutiny. Whatever is in the store in terms of firearms, others should be looked at more closely. Others should look into it, have a look, visit, and really see what's there. Thank you.

Mr. Sendlewski stated, I just wanted to add one quick item. One of the affidavits that Mr. Cuddy gave you was an affidavit from myself. I grew up in Polish Town on Lincoln Street, very close to the Peconic River and I had a lot of friends along the Peconic River. We shot at ducks off of the river bank, actually just west of what used to be the Weeping Willow Motel and in fact, people that live along the river can hunt from the river bank on Peconic River. Basically, we're not here to ask for a waiver or to bring a business into a residential community; we are a use that is a commercial use in a commercial zone that is permitted by the zoning, and the range is clearly accessory thereto. Thank you.

Mr. Newman stated, we did attach the ATF, Alcohol Tobacco and Firearms; we have a class 01 firearms license that allows us to have all the firearms that we have on display, and just for the record again, we do sell to the police, police agencies and the only people...I'm going to refer her to the Safe Act. You might want to read that tonight in its entirety. You cannot sell an assault weapon to any other person than active law enforcement. Active law enforcement. On the east end we have tons of different agencies; they're our best, friendliest, awesomest customers. It's by the law; police officers are allowed to buy them, so whatever she's seeing, she's seeing firearms that are only permitted to be bought and possessed by active members of the law enforcement. Mr. McLaughlin asked, anyone else to be heard on this matter? There were no further comments.

A motion was made by Ms. Worthington and seconded by Mr. Barnes that a reserve decision be set for August 22, 2019 with written comment period open for ten days. After which the hearing will be deemed closed on August 19, 2019. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

**Appeal 2019-017 – Anacletus Galasso III – 1116 Main Road, Aquebogue – SCTM No. 600-68-3-1 – RLC Zoning** - for an interpretation of Chapter 301 Section 64 A(3) where the proposed retail store is outside of the permitted area; required to have frontage along New York State Route 25 between South Jamesport and Washington Avenues and their logical extensions.

Patricia Stern, Esq. 110 Lake Avenue South, Suite 46 Nesconset, NY 11747 was present for the application along with Anacletus Galasso III, 181 Landing Road, Baiting Hollow. Ms. Stern stated, Vinland is the owner of four buildings that were known as Country Commons which is located on Route 25 in Aquebogue. It was purchased by Vinland Commons in March of 2001. At the time it was constructed, there were two buildings constructed on the premises and the property was zoned by the Town as BCR which permitted retail use. A site plan approval from the Planning Board was granted in 1987 which was specifically for retail and office complex. The C/Os were issued for Country Commons first two buildings in '94 and '97. The C/Os also stated it's for office and retail use. In 2004 the Town changed its code from BCR to RLC which by its own definition is to allow a limited range of roadside shops and services compatible with the agricultural and rural settings along arterial roads such as Route 25 and/or area zoned Hamlet Center or Village Center. This new RLC zoning district applied to Country Commons. In 2004 Vinland built two additional buildings in the rear of the complex and was issued certificates

of compliance by the Town in May of 2005 which also designated the buildings a use permit for retail. The certificate of compliance was issued after the change of zone to RLC. Since 2004 there have been numerous retail tenants in the various buildings; many of these tenants were engaged in retail sales. In addition, even after the change to RLC zoning, the Town continued to approve and issue special use permits for each of the tenants at Country Commons up until 2014. In September of 2014 Vinland made an application to the Building Department for a convenience store in Building 2 which had a C/O for retail/office uses; however, Jefferson Murphree, Building and Planning Administrator for the Building Department, denied the application claiming that the RLC zoning preclude use of Country Commons for retail purposes. The letter claimed that pursuant to the RLC code only those retail stores or shops with property frontage along Route 25 between S. Jamesport and Washington Avenues, which is one block, are permitted in the RLC district. S. Jamesport and Washington Avenues are a very small section of Main Road and Country Commons is not located in that area. The Building Department is now claiming that despite the lawfully issued C/O's which allowed retail use, the only retail use...the only uses that the Building Department will allow are antique stores and craft shops and nonretail uses such as agricultural production, nurseries, museums, libraries, schools, places of worship, parks and playgrounds and single and two-family homes which aren't applicable. Most, if not all of these uses, would result in serious modifications to the existing building or worse yet, the demolition of them rendering the real property useless for all those purposes. Retail use is the only practical use for Country Commons as it is located on the Main thoroughfare in Aquebogue. Vinland would not have purchased the premises if it didn't have C/O's for retail and office uses. On March 18 Vinland again filed an application for a Special Permit for retail use at the real property. On March 28, 2019 the Chief Building Inspector denied the application claiming the application did not comply with the RLC zoning because it was a proposed retail store outside of permitted area. That's the subject application before you. To the left and right of Country Commons are multiple retail uses such as True Value Hardware, East End Spas and Saunas, Barth's Pharmacy, but for some reason Country Commons is not allowed to have either office space or retail permits issued to it. So, that's the reason we're here before you. Since the C/O's were issued there have been multiple retail and office uses in the building, and... The actions of the Town in not granting these permits result in a defacto taking of Vinland's rights in the real property and the C/O's. Vinland was afforded no hearing prior to the defacto taking of these rights, and that's it. So, we are here challenging that determination.

Mr. Barnes asked, so when you say determination, are you referring to Mr. Hammond's letter? Ms. Stern replied, no, I'm talking about Mr. Murphree's letter which was issued in 2019. Mr. Barnes asked, just recently? Ms. Stern answered, just recently, yes. Mr. Barnes asked, I don't think we have a copy of that, do we? I haven't seen it. I would like to see it. Unless I'm missing something. Ms. Collins, reviewing the file stated, the last one is Brad's from March. Mr. Barnes stated, so we have Brad Hammonds back in March or May. Ms. Stern responded, March of 2019. The application was filed in May. Mr. Barnes stated, okay, that being said...Mr. Hammond pointed out that it was not in that particular zone between Washington and S. Jamesport Avenues. What is Jefferson's argument because I don't have that? What are your...what factually did he deny you on? Factually. Ms. Sterns stated, he denied it for the same reason. He said that it was not located within that Rural Corridor. Mr. Barnes replied, okay, so he kind of redid the letter. Is that what you're basically saying? Ms. Stern answered, basically, yes. Since they've been filing the applications in 2013, they've either not accepted the application at all, the Building Department, or they've just denied it for the same reasons. Mr. Barnes asked Ms. Collins, do you have it? Ms. Collins replied, it's not in the file. Mr. Barnes stated, okay, so we don't have that letter. It would be nice to have that. Ms. Stern replied, I can get you a copy of that. Mr. Barnes asked, is it a very short written letter? Ms. Stern answered as she held up the letter, actually, I do have it. It's a little blurry, but... Ms. Stern handed the letter to Ms. Thomas. Mr. Barnes asked, so that technically is his denial letter, basically. Ms. Stern replied, yes. Mr. Barnes asked, did you make an application seeking another use permit for retail space? Ms. Stern answered, yes, a second application was filed back in... Mr. Barnes asked, so you recently filed a retail use permit? Ms. Stern replied, yes, we recently filed an application. Mr. Galasso stated, yeah, this winter or March. Mr. Barnes asked, '19? Mr. Galasso replied, '19. Mr. Barnes asked, you filed for a retail use and he denied you based on that? Ms. Stern answered, yes. Mr. Barnes stated, you don't have any retail uses. Mr. Galasso answered, right. Mr. Barnes stated, okay. That would be helpful to know that because part of the denial process is making the application for the use permit. So, you have a tenant lined up and you can put them in there, and then he denied you the use permit. Ms. Stern replied, right. That's what he did. He applied for a use permit for retail. He had a tenant lined up for retail purposes and he put in the application for that; that's the reason he was denied on this subject



application. In regard to the previous application, that was a whole court issue. They went to an Article 78. We were granted relief, and then the Town appealed and the appeal pended for about two or three years. Then, on appeal, it was overturned. Because we didn't exhaust administrative remedies, which is why we're here before you. (Ms. Thomas returned with copies she made of Ms. Stern's letter from Jefferson Murphree.) We have an aerial photo of Route 25 which shows that at the very edge of the rural corridor is Country Commons, and then there are several retail uses along Route 25 to the east which would be Harbes Farms, Jamesport Country Store, (inaudible) Spas, and then right at the very corner there's Jamesport True Value Hardware which is actually to the left of Washington Avenue; it's not specifically in the corridor that allows it, but it's there anyway. So, it seems that the only person that's not being...everything else is either vineyard, which is allowed, or residential, which is allowed. So, it seems that the only person that's not being allowed that use is Country Commons.

Mr. Barnes stated, so, this letter that I'm looking at from Jefferson is dated 2014. Ms. Stern replied, yes. Mr. Barnes stated, I thought you said '19. Ms. Stern replied, no, no; this is the one that was subject to first an Article 78 proceeding. Mr. Barnes added, this is what started the litigation. Ms. Stern stated, exactly. Mr. Barnes noted, okay, now I got it. So, instead of going to the Zoning Board, you went straight to an Article 78 against the administrator? Ms. Sterns replied, yes. Mr. Barnes stated, okay. So, now, you're back; you filed another use permit application, and now you're trying to get relief. I don't know if this is the mechanism or not. I'm not sure. That's up to legal counsel. There's other ways that may have to be looked at; I'm not sure. I don't know what you think, but we'd have to digest it for sure. Ms. Thomas stated, the other determination wasn't made on the merits, it was a procedural determination, the original? Ms. Stern answered, the original one was procedural, yes. We actually had been successful on the merits, and then it was overturned based on the administrative. Ms. Thomas responded, okay. So, we should talk more about it with Bob. Mr. Barnes noted, yeah, I think we need to talk more about it. I mean, always in my mind I always thought...and this is just my personal opinion...that when you built that shopping center and it was zoned Village...whatever it was called... Ms. Stern finished, BRC. Mr. Barnes continued, you vested in retail uses then; that's just my opinion, and since the law changed, that kind of closed the door for you because they're not by your section of the street. Ms. Stern added, but it shouldn't have; he has a valid C/O regardless of whether or not you changed the zoning. He has a valid C/O; he's allowed to continue that use. Mr. Barnes noted, I don't know if he had a certificate of occupancy or he had a use permit. Ms. Stern responded, no, he has a certificate of occupancy that said retail use, at least for the front two properties. The back two properties he has a certificate of compliance and a use permit. Mr. Barnes added, I think initially the front buildings were built to the west and then you built the other two later on. Mr. Galasso replied, no, the two in the front were built first and the two in the back were built later. Mr. Barnes stated, but you don't have C/O's that say *that*? That they have retail use. Ms. Stern explained, the front two C/O's say "for retail use." The back two C/O's say certificate of compliance, and then there's a permit for them. Mr. Galasso added, but how can you...one piece of property say these buildings are retail use and these buildings can't? Mr. Barnes replied, I can't follow the logic, either. I don't follow the logic either, but some people think because they change the zoning it became a nonconforming preexisting use and you weren't allowed to expand or the use wasn't allowed anymore because it clearly stated it in the other section which is Washington and Jamesport. There's ways to resolve this, I think. These are the two buildings, office retail, building #2. Ms. Stern stated, that's the building in the front to the east. Mr. Barnes asked, when the Town Board did the site plan review in 2003 or 4, they did your site plan, right? And, they allowed you to build the other two buildings in the back. Correct? Mr. Galasso answered, correct. Mr. Galasso stated, all four buildings are on the original site plan, and they were phased. All of them. Mr. Barnes asked, so if I look at the 1987 site plan and lay it out, there are four buildings on there? Mr. Galasso answered, there are four buildings on there. Mr. Galasso added, because the parking was built for four buildings. Mr. Barnes replied, I get it. Ms. Stern asked, do you need us to get you a copy of that site plan? Mr. Barnes replied, no. I don't need it; maybe the other members need it. Ms. Sterns added, well, we'll get you one.

Mr. McLaughlin stated, okay, let's hear what this young lady has to say. Marie Lebrun, 1086 Main Rd, Aquebogue, was sworn in. Mr. McLaughlin asked, are you to the west of the property? Ms. Lebrun stated, I'm to the west of the property, yes. Mr. McLaughlin added, we had a problem with trees a couple years ago, if I'm not mistaken. Ms. Lebrun stated, problem with trees, yes; they cut the trees and things like that. There were some things, but they had been resolved. They put a sidewalk right next to our fence, and that's not allowed; you have to have a buffer. Things were corrected, but we had to come to many meetings, and it eventually got corrected.



Mr. Barnes asked, I think you got a variance for that, didn't you? For the buffer? Mr. Galasso replied, yes. Ms. Lebrun stated, it wasn't just...it's the law. Mr. McLaughlin asked, what's your problem now? Ms. Lebrun submitted correspondence to the board and a petition. Ms. Lebrun stated, this also contains the appeal. The town appealed the case and it did say that the petitioner did not establish that the Building Department's determination was beyond its grant of power. Also, the administrative remedies caused the petitioner irreparable injury. They have been able to rent quite a few of their places. In the back I was told by someone who had seen it, who was interested in renting it, that the ceilings were too low. That may be a problem. They have a second floor. It seems crazy just to put a second floor just for the mechanicals with windows. Besides that, we would like the rural corridor zoning to be maintained. Part of the property borders the Vinland Commons, as we do. We border the Vinland Commons. We have agricultural protection. They have rural corridor, just because part of their property borders the Paumanok Vineyard. So, I would like this to be maintained. There's very good reason for the preservation of the rural corridor. If you put in a convenience store at this location, this causes a problem. We have gone all throughout the town of Aquebogue and Jamesport, and we have many different petitions signed and submitted to different boards, the Town Board. So, the Town Board decided to fight this application for the retail use, and they finally succeeded. I think this is important; the Town spent a lot of money and a lot of time. We didn't ask for it; we didn't even know what was going on. The people in the neighborhood didn't know until after they won the first case. We only heard about it...we came here and they said, well, we're already doing the appeal. Then, we just found out in 2018 that they had won the case. We would like to maintain the rural corridor. This is very important for the unique rural character. That is what brings people to this area, this wonderful look to it. We don't want convenience stores; they wouldn't be popular. The Glass Greenhouse put in some kind of shop and the neighborhood didn't support it. Part of the petitions that we did, the people said they wouldn't support this. They like little delis, they like the things. They don't want to have the convenience store which brings in cheap food, candy and alcohol. Alcohol's another problem because they have children. They have a pre-school there. They also have a dance school and karate. Lots of children running all over the parking lot. It's not a good place for people zooming in for a cup of coffee or picking up a six pack. Not a great place, and I think that it will discourage the existing tenants. Why would you want to renew when you have too much traffic there? Also, if you know the curve in the road and then Tuthill, if they were to put a traffic light there, people coming around the curve would smash into people. It's a dangerous curve. I think an environmental impact study and also a traffic study of what would happen if something like that happened, but, it's up to you, and I respect your decision. Thank you.

Ms. Stern stated, I just wanted to say before anyone got up to talk about 7-Eleven. 7-Eleven is long gone; they're no longer interested in this space. They moved on to greener pastures because they were no longer willing to wait. We're not here looking to get approval for a 7-Eleven. We're just looking to use this space for regular retail office space. If we were to try to put in a 7-Eleven, that would be a separate application, and everybody could come and give their thoughts on that, but there's no 7-Eleven. So, we're not here asking for a convenience store at this time. In case anyone else wants to come up.

William Charles Van Helmond, current president of the Greater Jamesport Civic Association, was sworn in. Mr. Van Helmond stated, we just recently heard about this application, and seeing that we're not talking about 7-Eleven, I got nothing to talk about. We would not be in favor of a 7-Eleven, and I know the hoopla was a big problem in the past. What I do want to say just for the record as we're all learning about what they're trying to bring forward is that we want them to be successful at this property because everybody being successful wins. We need to create a unity with our neighbors, and we would like to work with you, helping you along with this process where we're all involved in the project 'cause it affects all of us. I'm not gonna really say too much; I've exchanged numbers and spoke with John and Mr. Galasso; I will hopefully have an appointment with them and their attorney. Maybe we can hash out some details and try to obtain some support, but the Aquebogue, Jamesport and western portions of Laurel are in our vicinity, and we're concerned. We do want to maintain...and I want to emphasize this...our rural character. The buildings that are on this site are very rural looking, campus style. We like that. We don't want brick and mortar buildings. We were recently involved in Sharper Hill where we were able to preserve that with our county legislature. Previous presidents prior to me were diligent with previous boards etc. That could have been a piece of Route 58 right smack between Washington and S. Jamesport Avenue. Fortunately, we were able to get that preserved and saved. So, we would like to assist in this project, and currently,

my group is working across the street with an Evelyn Alexander group doing a wildlife refuge directly across the street from your facilities. We would like to work with you also. That's all I want to put on the record for right now. We will be assisting in any way that we possibly can. Thank you very much for your time.

Mr. McLaughlin asked, anyone else to be heard? Joan Zaniskey, 50 N. Apollo Drive, Aquebogue was sworn in. Ms. Zaniskey stated, my reason for being here this evening is to try and bring to your attention...if you didn't already know...that a battle has been ensuing about development of retail properties at this Vinland Commons site. I do not wish to discuss anything involving Country Commons, or whatever the previous name was of this development, because I don't know anything about it. However, I do know about Vinland Commons, and I do know that many, many permits were issued for uses that were not permitted, etc. Why they were issued or how they were issued is not really for me to determine; I'm telling you that they were, and the employee who issued them is no longer an employee of the Town of Riverhead. Anyway, back to this deal. I would continue to be somewhat suspicious about what exactly is planned by the owner of Vinland Commons as far as his need to develop retail shops there. It seems to me that there are retail shops there already. Not convenience stores, but retail shops. Mr. Barnes stated, it's just about the use; the buildings are there already. Ms. Zaniskey stated, take a step back, sir. The buildings may be there, but the use of the buildings is still in question. Mr. Barnes replied, right. That's the issue. Ms. Zaniskey replied, basically what would have to happen here in order for those buildings and occupants, businesses there, to be legitimized is that the zoning would have to be changed. 'Cause rural corridor zoning does not permit this. Simple as that. Even though those businesses continue to operate there, and they're retail businesses. You may dance around the notion of what retail means, but I could tell you that for instance, Bliss Beauty Shop; they don't only do hair there. They call themselves a professional organization because their operators have to be licensed, but the owner of that business may not have to be licensed. So, how is it a professional organization? Beats me. Anyway, I don't want to split hairs, but a lot of things have happened there whereby the actual letter of the law concerning what was to be allowed there has not been followed. So, my only concern here is because of all this business that has happened in the past. I wonder based on what I was able to ascertain about this particular hearing is that there is another organization involved in this. I don't know if this attorney is part of that organization or what law firm she's with. I don't recall her having mentioned that. There is another organization who has actually written a letter to you people, and they call themselves AMPM Business Services. Now, who the heck are they? Mr. Wittmeier stated, you're asking us? We're asking you. Ms. Zaniskey stated, I don't know who they are; they wrote a letter to you. Ms. Stern replied, she's an expeditor. Mr. Barnes stated, Michelle Janlewicz. She's a local girl. Ms. Zaniskey asked, she's a local girl? Mr. Barnes answered, yes, she is. Ms. Zaniskey replied, okay. Mr. Barnes explained, she did the processing, just paperwork and stuff. She's not a legal representative. Ms. Zaniskey stated, fine. Very good. Now, what law firm are you associated, ma'am...attorney...I don't believe I heard what you said. Ms. Stern stated, I'm not going to call out across. Ms. Zaniskey asked, excuse me? Ms. Stern restated, I'm not going to call out across. Ms. Zaniskey asked, you're not going to call a what? I can't hear what you're saying. Mr. Barnes answered, she has to go to the microphone. Ms. Thomas explained, ma'am, she can't call out across. Mr. McLaughlin stated, she has to go to the microphone. Ms. Zaniskey responded, alright, thank you. I just didn't understand that you said the word "across." So, basically, this has been going on and on and on and on forever. So, possibly the solution is to either enforce the rural corridor zoning language as it exists today or make many, many people, residents, etc. in the Aquebogue community and Jamesport community terribly unhappy with a decision to change it from rural corridor to Hamlet Center or something else which would permit the owner to do just about what he wants. Where does that leave the rest of us? We're the tax payers. Mr. Wittmeier responded, that's why we have these hearings. To collect information. Ms. Zaniskey stated, fine. You hear me. You hear what I've said. I've been a resident of this community for the past twenty years. My family were Polish immigrants who were potato farmers here since the early 1900's, so I am not a stranger or a newcomer. I know a lot about what goes on here, and I would very much like to urge you to do the right thing for us in this community. 'Cause we live here. I thank you very much for taking the time to listen to me, and we will remember explicitly how you have decided this. Even though you are not elected officials, you are appointed, we will remember. Thank you. Mr. Wittmeier stated, thank you for your endorsement.

Mr. McLaughlin asked, anyone else to be heard? Ms. Stern approached and stated, I just want to point out that all the uses...Vinland Commons has always made sure that the uses that are there have permits. Every use in the commons right has a valid permit. The hair salon that she's talking about has been there since 2008; there's been

no issue with regard to the hair salon. The other uses that are there...there's, I think, a martial arts studio. There's an insurance broker. There's a financial advisor. These are all very quiet, friendly, neighborly uses. There's nothing crazy going on in the commons. With regard to the law firm that I work for, it's Scheyer & Stern LLC. Richard Scheyer has represented Vinland Commons for...or did represent Vinland Commons for fifteen years. I am lucky enough to have worked with him and taken over the representation. I don't represent anyone else other than Vinland Commons.

Ms. Thomas stated, I looked at the application; I just want to clarify. Is the applicant requesting that the Zoning Board determine that because the shopping center was built under a prior zoning use that permitted retail and that established the use by getting certificates of occupancy in the different units within the complex, that they vested in that retail use under the prior zoning and that although the RLC zoning that's now applied doesn't permit retail other than outside of a particular area that the vesting would create a preexisting nonconforming scenario? Is that the argument? Ms. Stern replied, I guess that is the argument. Yes, I guess that is the argument. Ms. Thomas stated, okay, because just like if you owned a house, a residence, and the Town changed the zoning on your house, you would be able to sell it and still be able to use it as a house even if the Town changed the zoning and didn't allow houses. And that happens a lot. Ms. Stern stated, right. Ms. Thomas stated, I just wanted to make sure we understood what the argument was.

Mr. McLaughlin asked, anyone else to be heard on this matter? There were no further comments.

A motion was made by Ms. Worthington and seconded by Mr. Wittmeier that the appeal be adjourned to August 22, 2019. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

**Appeal 2019-030 – Robert Anthony Caputo – 533 Center Street, Jamesport – SCTM No. 600-92-3-20 – RB40 Zoning** - for variances and/or relief from Chapter 217 Section 6 M(4) where second electrical service installed on detached accessory garage is not permitted; Chapter 301 Section 14 C where proposed habitable space in detached structure deemed not to be a customary accessory use to the principal single-family use and is not permitted; Section 222 E where proposed additions increase gross floor area within required rear yard abutting a rear street line representing an increase in degree of nonconformity of a preexisting nonconforming accessory structure which is not permitted; and, Section 17 where proposed additions increase impervious surface coverage to 22.2% and maximum permitted is 15%.

Anthony Portillo, architect with AMP Architecture, 15400 Main Road, Mattituck, was sworn in. Mr. Portillo stated, I have to apologize for my client. He decided to build an addition onto his garage prior to me knowing him or anybody else so this garage is built, and at the time I was hired, I explained to him all the wrong things he did. I think he understands. They do currently have a stop work order on the property. I did not know the client at the time. After I met him, this is where we are. The existing property has a garage that fronts West Street in S. Jamesport. The property's not common, I guess. There's basically two streets and then two side yards. So, the rear yard is on the street where he currently had his existing garage which was an existing nonconforming. He added a fourteen foot eleven inch addition to the rear of it. So he didn't necessarily increase nonconformity towards the rear yard, but increased it because of the setback situation from the rear yard. The total structure is now 33 feet long, and that is one of the reliefs that we're requesting that is on the addition of the nonconforming garage. The other relief is the addition increased the lot coverage of the property. The garage is a bit small to begin with. I think that if he did it the proper way and took the proper channels it might have made more sense to the board and others that the garage was a bit small to fit a car and other activities that you might utilize in a

garage. The second floor, the request is for an unheated area. He would like to finish it, but he obviously isn't running any heat. In the sense of an accessory use, it's not necessarily an accessory use, but that's what the use will be, basically just a place to store and things like that is what I understand. Mr. Barnes asked, and you drew the plans? Mr. Portillo stated, yes, sir, I drew the as-built plans after the fact. The garage is built with no plans basically. There are some small changes that are going to be required due to the historical board, which I've been in discussion with them, and they are asking the owner to readapt the building to what their standards are in that area regarding the aesthetics of the exterior. I don't have approval because I have to be here first, but I did have conversations with the board, and the design is within their aesthetic... Mr. Wittmeier asked, the existing garage, sir, does that have an attic or a space above it? Mr. Portillo replied, it was a small storage; it was a pull-down to get up there. He does have a staircase in this proposed design. Mr. Wittmeier asked, and what's going to be up there? Mr. Portillo answered, we're not proposing any plumbing; there is a subpanel, so there's electric in the garage. So, we're not requesting to add electric. He'll increase the electric obviously because of the size of the space, but it would be unheated, unfinished is what our request is for the relief. Mr. Seabrook stated, I'm sorry; what are you using that second floor for? Mr. Portillo stated, he doesn't really have a use; he's told me maybe like an office or like a studio, kind of like a place to put a pool table. That type of use. Mr. Seabrook asked, what does he do for a living? Mr. Portillo stated, he's not a year-round resident. He lives in the city; I think he does something with banking or something finances. Mr. Seabrook asked, so what would the office or studio... Mr. Portillo responded, I guess when he's out here that would be where he goes to work. It would be like a man-cave situation is how I think he wants to use it. He only uses the residence in the summer time. So, there wouldn't be any heating or anything like that. Mr. Barnes asked, let's face it; we looked at it. We saw the sliding door upstairs; the balcony's gonna be built and we have a separate entrance. You're asking to have a second meter. Obviously, it's going to be used for residential purposes. Not for storage. Mr. Portillo stated, I'm sorry; I should say storage, but also his plan is to use it as an office, pool table...that's kind of his idea. Mr. Barnes asked, why would he need a second meter, then? Mr. Portillo replied, that's a good question, sir. Mr. Wittmeier asked, didn't you say there was a second meter there already? Mr. Portillo replied, no, no, not a meter. There's a sub-panel for the garage. Mr. Barnes added, if I read the code right, two family is allowed in S. Jamesport, but I believe it has to be in the same structure. Mr. Portillo answered, I believe you're correct. Mr. Barnes continued, so, you're creating two separate occupancies, and I don't know if there were septic systems that were put in, they plan to be put in...Is there Health Department involved? Will there be a bathroom? Mr. Portillo stated, we're not requesting a bathroom. Mr. Barnes noted, not today. Mr. Portillo responded, I...honestly...just so you guys understand my relationship...the owner, I haven't even spoken much to him besides on the phone. I'm dealing with the builder, and my understand is that what this...that's what he wants to use this attic space...Mr. Barnes asked, is the owner here? Mr. Portillo stated, no, just me. Mr. McLaughlin asked, how about the builder? Who is the builder? Mr. Portillo replied, Joe Ross. Mr. McLaughlin asked, so, why would Joe Ross, being a builder, take it on without a building permit? Mr. Portillo replied, that's why my first statement to you guys was that I was not involved in that portion of it. Mr. Barnes stated, when you're dealing with something like this, the way to remedy it is to make an application, and you did that, and the way the building inspector/administrator, whoever it was, they saw that the things you're looking to do don't conform to the code, so they sent you here. So, now we're looking at something that's a proposed second story "storage." We know that's not going to be storage...with a balcony. 'Cause we can make him take the stairs out, have them pull-down stairs. We can do all sorts of fun things. You don't need the second meter. Mr. Portillo stated, my recommendation would be that we leave it as unheated, unfinished, and that would be what you guys allow which is probably what I would have recommended that maybe we could have it finished and unheated and not a panel; I'm sorry, not another meter. Mr. Barnes stated, I can understand people in the community; they look at these things and they see other people doing it, but there are channels to follow to get it legalized. We know where he headed with this so, I'll let you finish your presentation. Mr. Portillo stated, basically, that's about it, sir...Mr. McLaughlin asked, so this is a summer home for him? He lives in Fairfield, CT? Mr. Portillo answered, yes, sir. Mr. Barnes asked, and he's not here? Mr. Portillo replied, no, sir. Mr. McLaughlin asked, anyone else to be heard on this matter? There were no public comments. Mr. Portillo stated, I guess one other thing. I just want to state one thing. If we were to rewind the clock and say he didn't build this structure, I do think the garage space, the square footage, made that a more usable garage; I'm not disagreeing with anybody on the board in saying that the top floor is probably not as necessary. Unfortunately, because of the condition of the site and where that existing garage was, the sensible thing would be to build out the back to enlarge the garage. So, in that sense, I would ask that the board consider

that in regards to the notion that if we were here before anything was built, I think that everyone would agree that what was increased in regards to the garage is sensible and in the right location since that's where the existing garage was. In regards to the overall design, I don't know if I agree with it or not, but the fact is the way that the garage was approached to be enlarged it made sense. It wasn't extended to the side or anything. It was shaped out like a rectangle. I think is a sensible design approach. Mr. Barnes stated, yeah, to make a habitable space upstairs so you don't hit your head. Mr. Portillo added, well, again, the garage was like 18 feet deep. Mr. McLaughlin asked, do we want to see the owner? Mr. Barnes replied, no, I want to deny it. I'm ready. Mr. McLaughlin stated, okay. Anyone else to be heard on this matter? There were no public comments.

A motion was made by Mr. Barnes and seconded by Mr. Worthington that the appeal be denied. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

Mr. Portillo asked, can I ask you a question? Could we come back to the board requesting the garage at that size but we would look at how we deal with the second floor? Mr. Barnes stated, you have to make an application to the Building Department. Mr. Portillo stated, right, but we can come back? Mr. Barnes replied, you can come back for anything, but you have to file a new application, and refile with the building inspector 'cause this permit is done. Mr. Portillo responded, thank you very much.

#### DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2019-030

APPLICANT/PROPERTY OWNER: Robert Anthony Caputo, 1 Oak Dr, New Fairfield, CT 06812

RELIEF SOUGHT: for variances to and/or relief from Chapter 217 Section 6 M(4) where second electrical service installed on detached accessory garage is not permitted; Chapter 301 Section 14 C where habitable space in detached structure deemed not to be a customary accessory use to the principal single-family use and is not permitted; Section 222 E where additions increase gross floor area within required rear yard abutting a rear street line representing an increase in degree of nonconformity of a preexisting nonconforming accessory structure which is not permitted; and, Section 17 where additions increase impervious surface coverage to 22.2% and maximum permitted is 15%.

LOCATION: 533 Center Street, Jamesport

SCTM#: 600-92-3-20

ZONING DISTRICT: Residence B-40 (RB40)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 27,919 sq. ft. or 0.64 acres. Minimum lot area is 40,000 square feet; minimum lot width is 150 square feet; maximum impervious coverage is 15%; maximum height of residential buildings is 35 feet; minimum front yard depth is 50 feet; minimum either side yard width is 25 feet; minimum both side yards, total width is 55 feet; minimum side yard abutting side street is 50 feet; minimum rear yard depth is 60 feet.

DATE OF HEARING: 8/8/19

INSPECTION DATES: 8/1/19, 8/3/19, 8/7/19, 8/8/19

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and determines that this review falls under Type II 617.5 c(12) and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

HISTORY/PROPERTY FACTS

1. Property received Certificate of Occupancy dated October 3, 1990 (ZB 12848) for addition and alteration to residence, Certificate of Occupancy dated October 18, 1994 (ZB 16793) to demo and rebuild the garage, and Certificate of Occupancy dated January 20, 2010 to replace all windows.
2. A denial letter was sent from the Building Department on June 11, 2019 and an application was made to the Zoning Board of Appeals on June 24, 2019.
3. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
  - a. The property is presently improved with the following structure(s):
    - i. Two-story frame house
    - ii. Wood deck and second floor deck
    - iii. Two story frame garage

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought may produce an impact on adjacent properties or the neighborhood as after this board's inspection of the property, the garage addition constructed without a permit which includes a balcony, supports the impression that this addition is more than a request for additional storage.
2. The requested variance is substantial because it is evident to this board that the construction of the garage space is to be used as accessory living space.
3. The benefit sought by the applicant cannot be achieved by some alternative means as the construction was in progress and a Stop Work order was issued as there was no permit and work did not conform to code; however, the proposed use is not a customary accessory use to the principal single-family use, and it is within this board's purview to deny such requests. The board does not feel the space will be used for storage as initially proposed.
4. The requested variance may have an adverse impact on the physical or environmental conditions in the neighborhood/district as the proper channels were not followed in obtaining permits for construction, and the description of work proposed does not seem in keeping with what this board reviewed upon inspection of the property.
5. The alleged difficulty that the property owner is experiencing was self-created as the proper procedures were not followed for construction addition to the subject garage. Permits were not filed for, construction



was not to code, and a Stop Work order was issued, thereby requiring application to the Zoning Board of Appeals, post-construction.

The motion was made by Mr. Barnes and seconded by Ms. Worthington that the aforementioned determination be denied:

**THE VOTE**

**MR. SEABROOK: AYE MR. BARNES: AYE**  
**MRS. WORTHINGTON: AYE MR. WITTMEIER: AYE**  
**MR. MCCLAUGHLIN: AYE**

**This determination X was \_\_\_ was not  
therefore duly adopted**

Based upon the foregoing, the following area variance is DENIED and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

**NO CONDITIONS**

**Appeal 2019-031 – Scott Markert – 1756 Edwards Avenue, Baiting Hollow – SCTM No. 600-39-2-50.2 – RA40 Zoning** - for variances and/or relief from Chapter 301 Section 8 C where proposed habitable space in detached structure deemed not to be a customary accessory use to the principal single-family use which is not permitted; and, Section 11 where proposed accessory setbacks to side street line are 10 feet and 35.75 feet and minimum allowed is 50 feet.

Robert Stromski, AIA, 44 Circle Drive, Jamesport, approached. Mr. Stromski stated, I am the architect representative for the project. The property owner, Mr. Scott Markert, is present here, so if there are any questions to the owner, we could look at them. What you see before you is an application for a detached garage structure. The property has a unique contour situation being that the property has grade elevation change from Edwards Avenue up to where the house and where the proposed detached garage is. We have a situation where a detached garage portion where the lower level would be mostly hidden by the current grade. The proposed second story that we're proposing is the only portion that would be seen for the majority of the volume. The only two story element would be the wall that faces Edwards Avenue. We do have some pictures of structures in the area that do have detached structures with similar type of volume, second floor spaces above to go along with our assessment, but we feel this is not something that is out of character for the neighborhood. Mr. Markert, his purpose for the second story is that he has a growing family and the fact that he has children with grandchildren. He loves to be able to give his family the ability to come visit the property with him and have a place to stay. That's why you had seen in the proposed plans, we are looking to propose two bedrooms, a bathroom and a small living area above the garage. The garage size footprint is predicated in the fact that Mr. Markert would like to house his boat and trailer within the garage; that's why the lower level we actually have the room to house the boat and trailer inside the structure. So, it's not something that's gonna be on the property visible. If you would like, I could bring up pictures of similar structures in the neighborhood. Mr. Barnes stated, I know the neighborhood very well. I do; I think everyone else does. Mr. Stromski submitted the photos. Mr. Barnes asked, how big is the boat? Mr. Stromski stated, I believe the boat itself from the hitch to the back I believe is about 20, it's a 23 foot boat, so with the trailer you're looking at about 28 feet. That's why we've come up with the size that we did. Just so that you could fit the trailer with the hitch and so forth and have ability to move around it. We tried to design the structure kind of similar to what you see here as where the second story is pretty much a large gable that basically has dormers that make the volume so we're trying to limit the volume exposure to the surrounding areas. It would basically be in character to the pictures I showed you, to be of a cottage style. Not something that is very large.

We were sympathetic to the type of volume space we were creating. Mr. Wittmeier asked, how do you get from the garage to the top? Is there a lift there? Mr. Stromski stated, there's an interior stair. Mr. Wittmeier stated, no, if you wanted to get up to the house now? Mr. Stromski stated, there's an interior stair from the garage that you would go up, and then from that level, there are steps to grade. So you would have to go up. Mr. Wittmeier stated, that's pretty steep. Mr. Stromski relied, the stair slope that we have, if you look at the floor plan, it's a pretty large run from the stair; it's less than twelve feet. So we don't have to have...but that stair would be a normal stair that you would see in a residence. It's not something that would be cumbersome, but again, this is pretty much a garage that is primarily used for the storage of the boat and some recreational activities. He does have a garage that's part of the residence where he has his vehicles. That would be used more on a daily basis, so the premise was not to be concerned about getting from the garage to the main residence. It was really just to be able to store the recreational vehicles when they're not in the water which is the winter time, so. I don't know if the board has any questions about the project. Mr. McLaughlin asked, anybody? Mr. Seabrook answered, no. Mr. Barnes noted, good news is you didn't start it yet. All laughed. Mr. Stromski added, the placement of the garage, we tried to keep it at least ten foot off the property line from where it was because of the development of the property. Telephone poles that are on Edwards Avenue. We're kinda locked into a certain spot.

Mr. McLaughlin stated, I would highly recommend fixing that stairwell, staircase going up from Edwards Avenue. Mr. Markert asked from the audience, how do you know about that? Mr. McLaughlin stated, 'cause I walked up it, and then I walked down it. I visited your property today. Mr. Barnes joked, then we had to call the police to find him. Mr. Markert added, I built that myself. Mr. McLaughlin replied, I could believe that. Mr. Barnes asked, Rob, how are we doing on the septic system? Mr. Stromski replied, we haven't filed anything for the Health Department because we wanted to come here before that. Mr. Barnes asked, how many bedrooms are in the current house? Mr. Markert answered, four. Mr. Barnes added, you're probably going to have to upgrade. Mr. Stromski stated, we will have to upgrade. Our position is more than likely we're going to be doing a separate sanitary system for the structure and then the house, but once you go in front of the SCDH, the entire property has to meet current standards. That is a discussion I had with the owner that that is another application we have to do pending the decisions we have here. Mr. Barnes stated, it's maxed out, but I would suggest to our fellow members that we put a condition on it if we want to approve it that no kitchen be put in this and used as a separate residence, only for his personal family use. Mr. McLaughlin stated, okay. That's fine with me. Anyone else to be heard? There were no public comments.

A motion was made by Mr. Seabrook and seconded by Mr. Wittmeier that the appeal be granted with the condition that no kitchen is to be installed, not to be used as a separate residence, and for personal family use only. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

#### DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2019-031

APPLICANT/PROPERTY OWNER: Scott Markert, 1756 Edwards Ave, Baiting Hollow, NY 11933

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 8 C where proposed habitable space in detached structure deemed not to be a customary accessory use to the principal single-family use which is not permitted; and, Section 11 where proposed accessory setbacks to side street line are 10 feet and 35.75 feet and minimum allowed is 50 feet.

LOCATION: 1756 Edwards Avenue, Baiting Hollow

SCTM#: 600-39-2-50.2

ZONING DISTRICT: Residence A-40 (RA40)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 20,716 sq. ft. or 0.48 acres. Minimum lot area is 40,000 square feet; minimum lot width is 150 feet; maximum impervious surface is 15%; maximum height of residential buildings is 35 feet; minimum front yard depth is 50 feet; minimum either side yard width is 25 feet; minimum both side yards, total width is 55 feet; minimum side yard abutting side street is 50 feet; minimum rear yard depth is 60 feet.

DATE OF HEARING: 8/8/19

INSPECTION DATES: 8/1/19, 8/3/19, 8/7/19, 8/8/19

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and determines that this review falls under Type II 617.5 c(12) and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

#### HISTORY/PROPERTY FACTS

1. Property received a Certificate of Occupancy, ZB 4667, on March 23, 1978 for a deck and a Certificate of Occupancy, ZB 38864, on August 8, 2014 for a second floor addition to single family residence consisting of bedroom, bathroom and balcony.
2. A denial letter was sent from the Building Department on June 25, 2019 and an application was made to the Zoning Board of Appeals on July 10, 2019.
3. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
  - a. The property is presently improved with the following structure(s):
    - i. Two-story frame house
    - ii. Frame shed
    - iii. Second floor deck

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as the project is proposing to place the detached garage within the sloping grade of the hill. The property is situated between Edwards Avenue and Cliff Way, and the proposed structure is placed towards the corner by the roadways not near the adjoining properties.
2. The requested variance is not substantial as compared to the surrounding properties and the common reduced setbacks. The living space is to provide additional sleeping rooms for the family since the house is modest in size.

3. The benefit sought by the applicant cannot be achieved by some alternative means because the existing house does not lend itself to have an addition of an attached garage. The size of the structure is to allow for storage of the owner's boat and trailer. The size and shape of the loft does not lend many alternative options that would not require a variance.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as the property is already developed and the expansion of two additional bedrooms would not have an adverse effect on the environment. Sanitary systems would be verified to meet current standards or be upgraded accordingly to SCDHS standards.
5. The alleged difficulty that the property owner is experiencing was not self-created due to the original size and shape of the lot.

The motion was made by Mr. Seabrook and seconded by Mr. Wittmeier that the aforementioned determination be approved:

**THE VOTE**

**MR. SEABROOK: AYE      MR. BARNES: AYE**  
**MRS. WORTHINGTON: AYE      MR. WITTMEIER: AYE**  
**MR. MCCLAUGHLIN: AYE**  
**This determination X was \_\_\_ was not**  
**therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED with conditions** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

1. No kitchen to be installed and structure not to be used as a separate residence
2. Structure to be used for personal/family use only

**Appeal 2019-032 – J. Petrocelli Development Associates – 420 East Main Street, Riverhead – SCTM Nos. 600-129-3-12 (DC-1 Zoning) & 600-129-3-14 (DC-5 Zoning) - for variances and/or relief from Chapter 301 Section 158 A on parcel described as SCTM # 600-129-3-14 where proposed impervious surface is 85.6% and maximum permitted is 60%; and, Section 259 D(2) where lighting encroachment is 0.13 footcandles to the west and 0.14 footcandles to the east on adjacent properties and maximum permitted is 0.1 footcandles, whereas luminaires on commercially used properties shall be located and shielded in a manner to prevent light projection beyond the property line.**

Mr. Seabrook recused himself. Eric Russo, Esq. of VanBrunt, Juzwiak & Russo, 140 Main Street, Sayville, NY was present for the applicant J. Petrocelli Development Associates. Mr. Russo stated, they are the property owners as well, of the property under J. Petrocelli Development Associates as of November 15 of '17 and Ostrander Property LLC as of May 4 of '16. As stated in the call, the property is situated at 420 E. Main Street in Riverhead and also fronts on 117-123 Ostrander Avenue, as well. It's on the northeast corner of Main, 73 feet west of Ostrander Avenue, and on the west side of Ostrander Avenue 175.61 feet north of East Main Street. It's two tax maps as stated. The property area is 24, 417 sf, and it has split zone of DC-1 district and DC-5. There are no prior applications regarding these particular two parcels before the board. The properties are singly and separately owned, although they are joined as part of the proposal. And as stated by Ms. Collins, the variance relief relates to impervious surface area of 85.6 where 60% is permitted, and there are lighting encroachments as it relates to the east and to the west where the maximum is 0.1. There are various Town documents and records for the property, letters in lieu going back to October of 1980 and going forward from there as it relates to the preexisting uses of the structures on both parcels, reconstruction due to fire, demolition of garage, of residence, of doctor's

office, of sheds, as well as proposed building permits. The particular property in question is going to be used in tandem with the Preston House Restaurant and Hotel. I provided you with a document binder which shows 45 photographs of the subject premises and the area surrounding to it which shows that the area is a mix of residences, commercial uses, and parking in DC-1, DC-3, DC-5 zoning on the north, the south, the east and the west. I firm and aver all of my statements on our application that we put before you this evening, and I'm just going to put forward here that the application has been moving along. We filed the application with the Town Board for a Special Permit and Site Plan because they have jurisdiction based on the historic district and the downtown zoning. We've gotten Landmark Preservation Commission approval as of July 11<sup>th</sup> of this year. Riverhead Town Architectural Review Board approval as of July 23. The Town Board is the Lead Agency as of May 22 of this year, and the Town Board approved so you could expeditiously approve this application a SEQRA determination as of August 6 of '19 should you find that the relief being requested is meritorious. That being said, it's a 1/3 of a mile west of Riverhead Town Hall, and I know you know where this is located. Requirements of 267-B under variance relief, there is no undesirable change in the character of the neighborhood or detriment to nearby properties as the parking, impervious parking being proposed is going to provide for additional hotel rooms and spa services for this facility and in conjunction with the hotel and restaurant. As far as the lighting is concerned, although it may slightly spill over, it spills to the side on the municipal parking area, so, as a result of that it is prudent to allow for safety of the public and pedestrians who are in the municipal lot as well as those who may be walking through the area of this particular parking lot. The relief in our opinion is not substantial because as far as the impervious surface is concerned, we are allowing for additional parking, and in addition to that, we are covering the drainage and grading so that there is no environmental or topographical issues as relates to it. As far as the lighting is concerned, again, I point back to the fact that it's a safety issue, and it's LED lighting; it will be down lit. I provided you with a photograph because there have been building permits allowed for some of the activities on site that show you the lighting will be similar to what is there in the downtown area, and there's a photograph in that. That being said, it's not a self-created issue. We're trying to comply and provide the necessary relief so that we have the proper parking and drainage and lighting. If you have any other questions, I believe, in my opinion, the relief we are seeking is the minimum necessary and yet allow us to proceed with the application. I have nothing further unless you have questions for me. Your approval would be appreciated. Mr. McLaughlin stated, Mr. Russo, everything is very concise. We even have a letter from the penguin family across the street with their approval (laughing). Mr. Barnes added, and Sammy the Seal. Mr. McLaughlin stated, I don't think we have a problem. There doesn't seem to be anybody in the audience. Mr. Russo added, I was enjoying listening to you all this evening and the varied applications. Mr. McLaughlin replied, no weapons involved at this...Mr. Russo joked, there are no weapons involved with this, and the only weapon we would have on site is in the northeast corner of the parking lot, there are presently bee cages or stacks of bees where they create the bee that they use in the restaurant. I believe those are going to be removed or relocated. Otherwise, there's nothing further I have to offer. Mr. McLaughlin laughed, as long as their friendly bees...

A motion was made by Mr. Barnes and seconded by Ms. Worthington that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

#### DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2019-032

APPLICANT/PROPERTY OWNER: J. Petrocelli Development Associates, 100 Comac Street, Ronkonkoma, NY 11779

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 158 A on parcel described as SCTM # 600-129-3-14 where proposed impervious surface is 85.6% and maximum permitted is 60%; and, Section 259 D(2) where lighting encroachment is 0.13 footcandles to the west and 0.14 footcandles to the east on adjacent properties and maximum permitted is 0.1 footcandles, whereas luminaires on commercially used properties shall be located and shielded in a manner to prevent light projection beyond the property line.

LOCATION: 420 East Main Street, Riverhead

SCTM# & ZONING DISTRICT: 600-129-3-12 (Downtown Center-1, DC-1), 600-129-3-14 (Downtown Center-5, DC-5)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 24,417 sq. ft. or 0.56 acres. *DC-1 Zoning:* Minimum lot area is 5,000 square feet; minimum lot width at front street is 50 feet; building lot coverage (footprint) maximum with sewer is 80%; building lot coverage maximum with Transfer of Development Rights is 100%; maximum impervious surface is 100%; maximum height of buildings is 60 feet; floor area ratio maximum with sewer is 4.00; floor area ratio maximum with Transfer of Development Rights is 5.00; minimum front yard depth is 0 feet; side yards (corner lot) minimum depth facing side street is 0 feet; side yards (corner lot) minimum combined depth for 2 sides is 0 feet; side yards (interior lot) minimum depth for each is 0 feet; side yards (interior lot) minimum combined depth for 2 sides is 0 feet; minimum rear yard depth is 0 feet. *DC-5 Zoning:* Minimum lot area is 5,000 square feet; minimum lot width at front street is 50 feet; maximum building lot coverage with sewer is 35%; maximum impervious surface is 60%; maximum height of buildings is 35 feet; maximum floor area ratio with sewer is 0.70; minimum front yard depth is 15 feet; minimum depth for each side yard for interior lots is 10 feet; minimum combined depth for 2 sides for interior lots is 20 feet; minimum depth of side yard facing side streets of corner lots is 10 feet; minimum combined depth of side yard for 2 sides of corner lots is 20 feet; minimum rear yard depth is 25 feet.

DATE OF HEARING: 8/8/19

INSPECTION DATES: 8/1/19, 8/3/19, 8/7/19, 8/8/19

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 this matter was referred to the Suffolk County Department of Planning and Development was considered to be a matter of local determination.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application. By Town Board Resolution #2019-426, the Town Board classified the action as Type 1 pursuant to SEQRA and requested lead agency. The mandated 30-day Coordinated Review period with involved agencies began on July 1, 2019 and ended on July 31, 2019. By Town Board Resolution #2019-612 dated August 6, 2019, the Town Board claimed Lead Agency status and issued a negative declaration pursuant to SEQRA for the Special Permit and Site Plan applications.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

#### HISTORY/PROPERTY FACTS

1. Property (SCTM #600-129-3-14) received a Letter of Pre-Existing Use on April 20, 2016 as a two-story wood frame single family dwelling with three bedrooms, three bathrooms, over full unfinished basement/crawl space with front and side brick stoops and a one-story frame dentist office building (defunct) over full unfinished basement.



2. Property (SCTM #600-129-3-12) received a Letter of Pre-Existing Use on April 28, 2017 as a two-story frame building with first floor living area apartment and one office on the first floor.
3. On September 2, 1983 property (SCTM #600-129-3-12) received a Certificate of Occupancy, ZB 3197, for bathroom alteration and a Certificate of Occupancy, ZB 5359, for alterations and use for four offices on second floor.
4. On December 11, 2017 property (SCTM #600-129-3-12) received a Demolition Permit, 17-1096, for demolition of a detached garage.
5. On January 10, 2018 property (SCTM #600-129-3-14) received a Demolition Permit, 18-0014, for the demolition of a single family residence, shed and doctor's office structures.
6. On March 19, 2018 property (SCTM #600-129-3-12) received a building permit, 18-0237, for exterior alterations to include new siding, windows, doors and roof in accordance with LPC approval dated November 27, 2017.
7. A Site Plan application to construct a 35 stall asphalt parking field with associated drainage and site improvements and to renovate the existing building was submitted to the Planning Department on November 2, 2018.
8. A Special Permit application to renovate existing building and add 106 sq. ft. for elevator and cellar entry was submitted to the Town Clerk on June 11, 2019.
9. A denial letter was sent from the Building Department on July 12, 2019 and an application was made to the Zoning Board of Appeals on July 19, 2019.
10. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
  - a. The property is presently improved with the following structure(s):
    - i. Two-story frame converted residence

**FINDINGS:** The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as the site provides additional and adequate parking for the use of the subject premises given additional hotel rooms with spa services to be constructed in connection with the Preston House Hotel and Restaurant.
2. The requested variance is not substantial because it is necessary and adequate to allow for the number of required parking spaces to be provided for the subject premises as additional hotel rooms and spa/reception lounge and its shared use of the Preston House Hotel and Restaurant.
3. The benefit sought by the applicant cannot be achieved by some alternative means as a reduction in area of paved parking would cause an inability to meet the needs of the joint use of the properties.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as the additional paved area provides for necessary grading and drainage to address any environmental concerns as to runoff.
5. The alleged difficulty that the property owner is experiencing was not self-created as the paved parking is necessary for the subject use, and although the impervious area has been increased, an approval will allow for the minimum variance necessary to provide paved parking on the site and will preserve and increase parking for the adjoining properties in the area.

The motion was made by Mr. Barnes and seconded by Ms. Worthington that the aforementioned determination be approved:

**THE VOTE**

**MR. SEABROOK: ABSTAIN      MR. BARNES: AYE**  
**MRS. WORTHINGTON: AYE    MR. WITTMEIER: AYE**  
**MR. MCLAUGHLIN: AYE**

**This determination X was \_\_\_ was not  
therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

**NO CONDITIONS**

**Minutes of July 25, 2019** – A motion was made by Mr. Wittmeier that the minutes be adopted. The motion was approved by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	ABSENT
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

**NEXT MEETING DATE** – August 22, 2019 at 6:30 PM

A motion to close the meeting was made by Mr. Barnes. The meeting was closed by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	ABSENT
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

Approved and Dated: 8/22/19

Very truly yours,



Fred McLaughlin, Chairman  
ZONING BOARD OF APPEALS